



July 24, 2012

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OFFICE OF THE
COUNSEL

VIA UPS OVERNIGHT

Jeff S. Jordan
Supervisory Attorney
Federal Election Commission
Office of General Counsel, CELA Division
900 E. Street N.W.
Washington, D.C. 20463

Re: **MUR 6592**

I write in response to the letter dated June 19, 2012 from the Federal Election Commission, Complaints Examination & Legal Administration Division (the "Commission") stating that a complaint alleging violation of the Federal Election Campaign Act of 1971 has been lodged with the Commission against CBS Outdoor Inc. ("CBS Outdoor"). A copy of the complaint, from Stephen R. Bough, Esq. of Kansas City, Missouri (the "Complaint") is enclosed with the letter.

Stated succinctly, CBS Outdoor has not violated the Campaign Finance Law in any manner and no action should be taken by the Commission against it. What occurred is an arm's length sale of advertising to a candidate in the ordinary course of business, with no political contribution to the candidate or his campaign either made or intended by CBS Outdoor. The following is a more detailed response to each of the allegations raised in the Complaint against CBS Outdoor.

CBS Outdoor Did Not Discount the Rate Charged for Advertising to Candidate Jacob Turk

Enclosed herewith as Exhibit A is a copy of all of the Advertising Contracts entered into with "Jacob Turk - Candidate" during the current election cycle.¹ There is a contract entered into in December 2011 for a price of \$2,500.00 and the three (3) contracts entered into at various times in 2012 that aggregate to a total price of \$6,181.25.

You will note that the overwhelming majority of the signs contracted for in all the contracts were small 6' x 12' signs known in the outdoor advertising industry as "8 sheets". The ultimate price paid by an advertising client is in almost all cases for such 8-sheets is negotiated, based on a number of competitive factors, including location, size of displays, other competitive

¹ The contracts and other data provided herewith are deemed competitively sensitive and confidential by CBS Outdoor. We provide all this data under the protection of 2 U.S.C. 4379 (a) (4) B and 4379 (a) (12) A and do not consent to making them public.

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offers etc.[See Holmes Affidavit, Exhibit B] In Kansas City, the negotiated rates for 8-sheets usually falls between \$50 and \$150 per sign for a four (4) week showing period [See Affidavit of Tracy Holmes, Exhibit B]. In each of the four (4) contracts entered into with Jacob Turk, the price for each 8 sheet was \$125 per four (4) week period, close to the higher end of the current price range.

Also included in two (2) of the 2012 contracts are a small number of 12'x 48" signs, known in the industry as "Bulletins". Pricing for these larger signs is far more location sensitive and can vary greatly based on the specific location and other competitive factors. In the case of the bulletins sold to Mr. Turk, they were sold for fractional parts of four (4) week advertising periods at prices between \$600 and \$1,000 for an abridged two (2) week advertising period (which would be between \$1,200 and \$2,000 per standard four (4) week period), well within the established parameters of pricing for such signs.

CBS Outdoor has an established policy with regard to political advertising. A copy of that policy is enclosed herewith as Exhibit C. To avoid allegations similar to those contained in the Complaint, the policy, provides that during any election period, once a price is established through negotiation for a political advertisement, the same price will be maintained for all other political ads at the same or similar locations. To date, there has been no other candidate or campaign that has sought the locations contracted for by candidate Turk during the current election cycle. If there were such request by any other candidate, he or she would be offered the same pricing provided to Mr. Turk and no further negotiation would transpire [Holmes Affidavit, Exhibit B].

The Complaint alleges that CBS Outdoor must have undercharged Candidate Jacob Turk or made an in-kind donation. Mr. Bough makes this allegation based on an un-named expert who purportedly attests that a single vinyl on which signage is photocopied and installed on a sign costs \$1,500. The clear implication of this assertion is that the total cost paid by the candidate of \$6,100 in 2012 must be less than CBS Outdoor's cost and the advertisements posted by CBS Outdoor are political contributions to candidate Turk. This allegation is patently incorrect. The candidate did, in fact, pay approximately \$6,100 for advertising in 2012, but as noted above, this was an arm's length negotiated price. Also as noted above, the overwhelming majority of the signs contracted for by or on behalf of Mr. Turk were 8 sheets. Vinyl is not used on 8 sheets. Instead paper posters are printed and posted on the sign structures. The cost of each freshly printed paper poster in Kansas City is approximately \$16, a cost that was included in the \$125 per sign price charged to Mr. Turk [Holmes Affidavit, Exhibit B].

With regard to the larger bulletin signs contracted for Mr. Turk, the cost of pre-printed, ready to post vinyl in the Kansas City Market is approximately \$600-\$650 [See Holmes Affidavit, Exhibit B]. That is a cost that could have been absorbed by CBS Outdoor within the prices charged to candidate Turk for the bulletins he purchased. In fact, however, there was no cost to CBS Outdoor whatsoever, since existing vinyl used in a previous campaign by Mr. Turk and retained on his behalf by CBS Outdoor (as it does for many clients) was used. Enclosed as Exhibit D is a work order showing the removal of the pre-existing vinyl from storage and posting thereof [See also Holmes Affidavit, Exhibit B].



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CBS Outdoor Did Not Make a Political Contribution by Leaving the Ads Up After Expiration of the Contract Term

The Complaint also alleges that CBS Outdoor made illegal campaign contributions by leaving some of the ads up after the expiration of the contract term. That allegation displays a fundamental ignorance about the practices of the outdoor advertising business.

Enclosed herewith as Exhibit E is a compilation of the Proofs of Performance for each of the four (4) contracts entered into with candidate Jacob Turk. The forms show, inter alia, the "actual dates" that the copy was posted and the date the showing was "finished" and the copy was removed. In most cases, the copy was removed within a few days of the contracted for end date. In a small number of cases the copy was left posted for a considerably longer period.

This disparity is due to standard commercial practices in the outdoor advertising industry. It is most often not possible to post signage on the projected start date in a particular contract. Therefore, the terms of the Advertising Contract, in most cases (and in all the contracts entered into with Mr. Turk), gives the outdoor advertising company some latitude as to when it must post copy (see Paragraph 3 of the Standard Terms and Conditions contained in Exhibit A).

The date for removal of copy is even more uncertain. It is a matter of industry practice that unless the advertiser insists on prompt removal at the end of the contract period in the associated advertising agreement, copy remains in place after the expiration of a contract until new copy is to be posted. This allows for the efficient allocation of manpower and further keeps the signs always filled with copy, which enhances the ability to solicit and secure new advertisers. All outdoor advertising companies do the same and the advertisers know it and accept it [See Holmes Affidavit, Exhibit B].

CBS Outdoor Has No Liability For The Copy

The Complaint contains two allegations concerning the content of the copy on the signs posted by CBS Outdoor on behalf of Candidate Turk. As a matter of good business practice, CBS Outdoor does try to act responsibly with regard to content it accepts (see Paragraph 2 of form Terms and Condition to Advertising Contract in Exhibit A and the Political Advertising Policy in Exhibit C) but ultimately looks to the advertiser to be responsible and indemnify it for the content of the copy. In this case, neither CBS Outdoor nor candidate Turk can be shown to have willfully violated any law or regulation with regard to the content of the copy.

Firstly, the Complaint asserts that some of the copy did not have the required attribution as to who paid for the ad. Enclosed as Exhibit F, is a copy of the actual photographic proofs from which the actual copy was created for the various ads. The attribution is included in each one. If it is missing in any case on a particular sign, it is the inadvertent result of the posting of the copy on the 8 sheets. It appears that in a few cases the attribution clause on the copy was mistakenly fully or partially covered by the trim of the frame while being posted. Also enclosed as part of Exhibit F are photographs of some of the 8 sheet signs taken to prove performance of the contract and that show the partial covering of the attribution on the copy [See also Holmes Affidavit, Exhibit B].

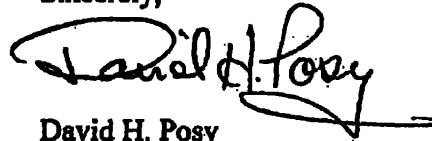


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The second allegation has to do with the wording of one ad and the allegation that it is intended to give the impression that Mr. Turk is already in Congress by not including the word "for" in the logo "Turk U.S. Congress". That view is a matter of subjective opinion and questionable at best. More importantly, the Commission has already opined in an advisory opinion that the absence of the word "for" in a logo for a U.S. Congressional campaign is permissible under U.S. law [See Exhibit G, FEC Advisory Opinion 1986-11, dated April 17, 1986].

For all of the reasons noted above, CBS Outdoor has not violated the Federal Election Law and sincerely asks that no action be taken by the Commission against it. Should you have any questions or wish to further discuss this submission or anything else relating to the Complaint against CBS Outdoor, please do not hesitate to contact the undersigned.

Sincerely,



David H. Posy
Senior Vice President/General Counsel



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JACOB TURK

U.S. CONGRESS

Jobs Here. Jobs Now.

Paid for by Jacob Turk for Congress

kForCongress.com

F



JACOB TURK

U.S. CONGRESS

Remember Me

Run for by Jacob Turk for Congress. www.TurkForCongress.com

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JACOB TURK

U.S. CONGRESS

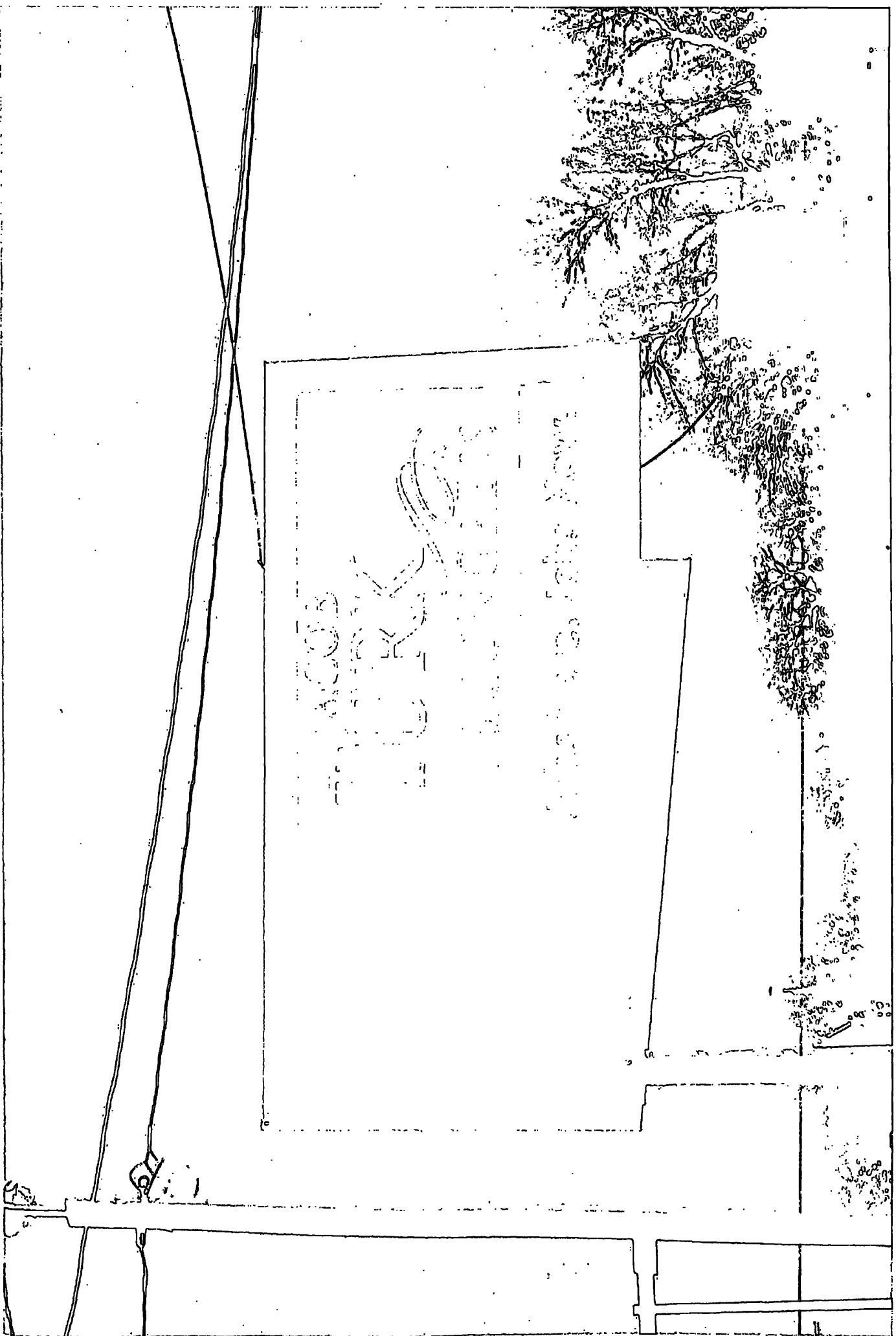
Marine Veteran

Paid for by Jacob Turk for Congress. www.TurkForCongress.com

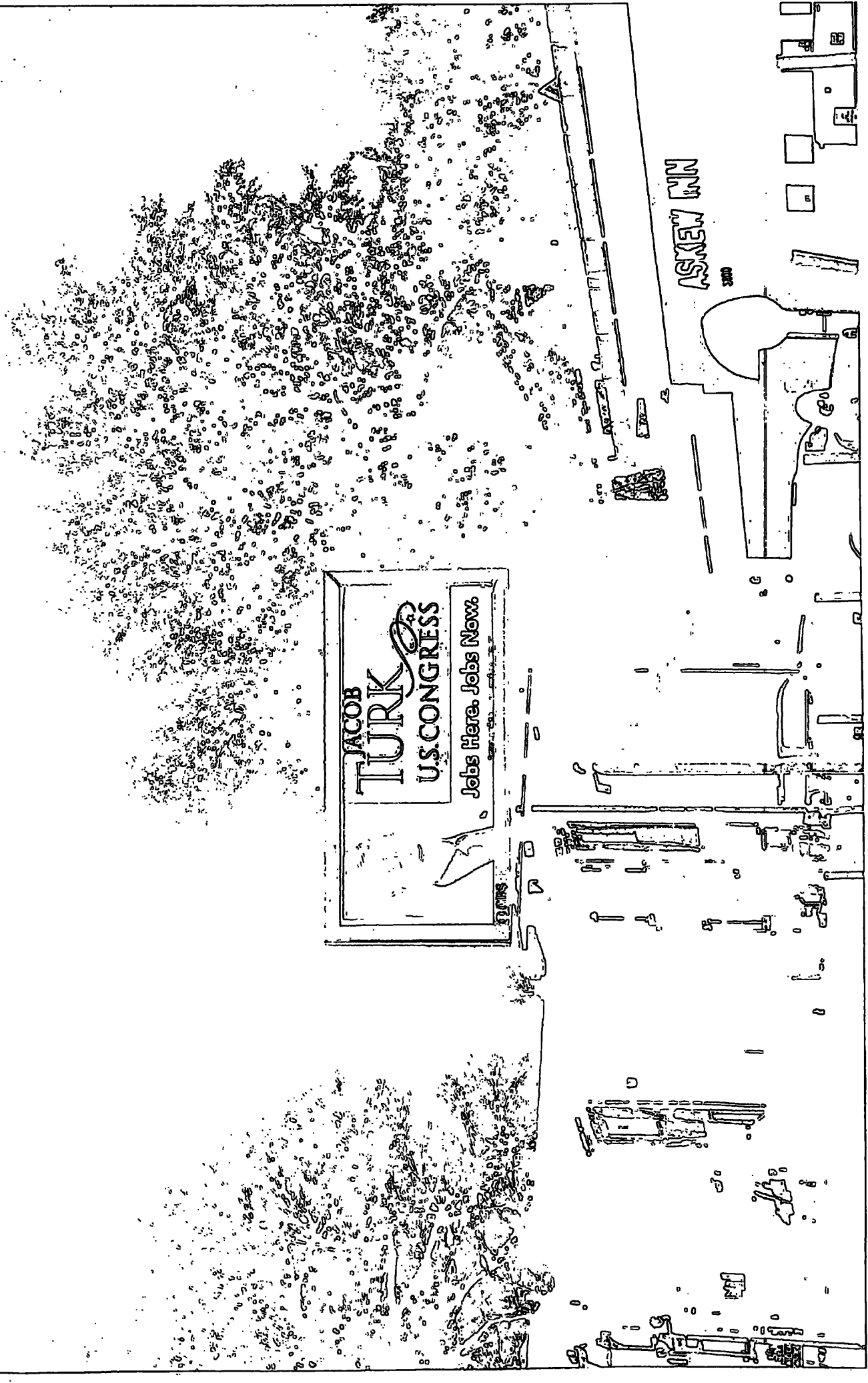
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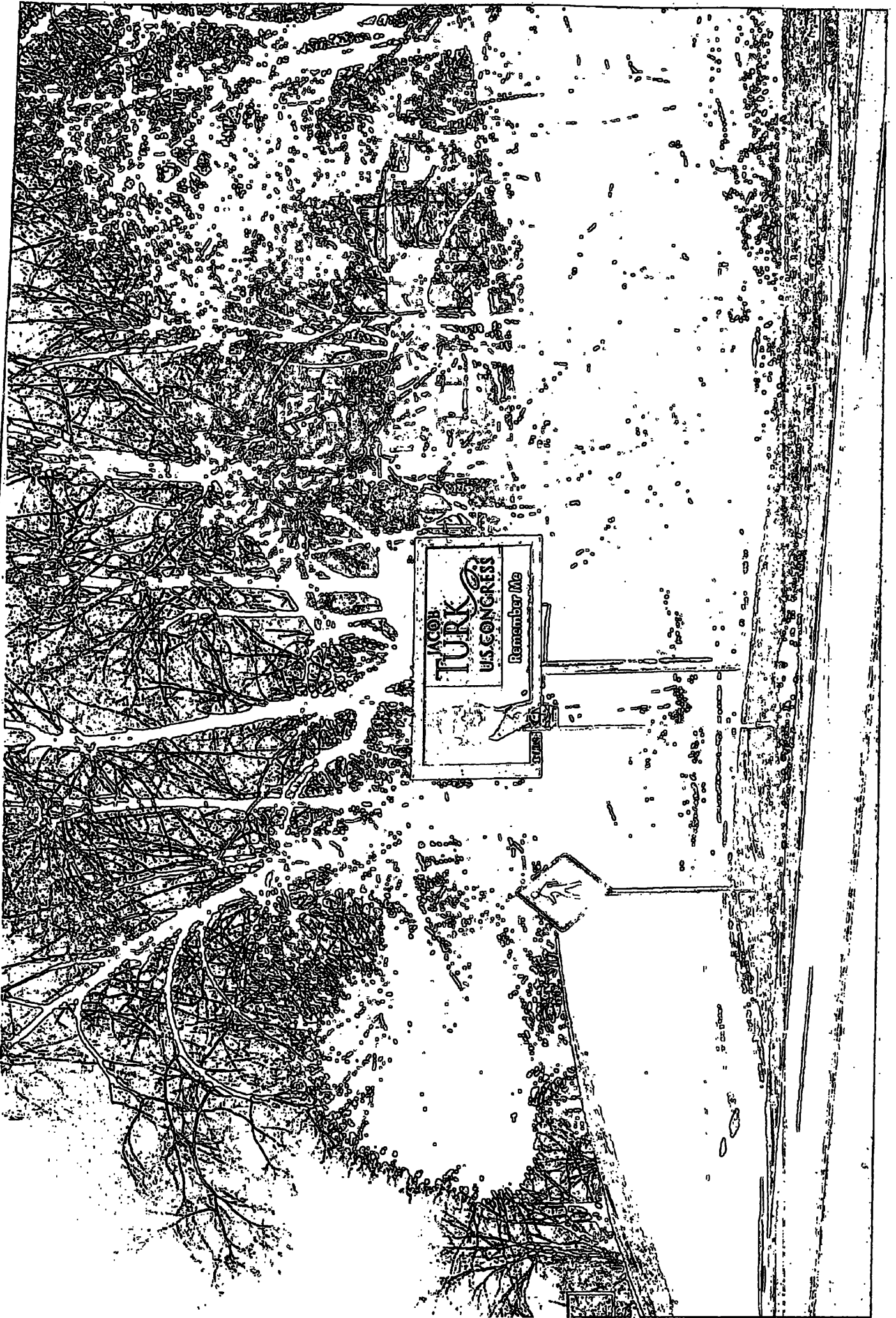
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FEDERAL ELECTION COMMISSION
Washington, DC 20463

April 17, 1986

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1986-11

Mr. Ronald T. Butler
Deputy Director
Mueller for Congress
11736 Portlew Drive
Newbury, Ohio 44065

Dear Mr. Butler:

This responds to your letter of March 20, 1986, as supplemented by your letter of March 25, 1986, requesting an advisory opinion on behalf of the Margaret Mueller for Congress Committee ("the Committee"),¹ the principal campaign committee of Margaret R. Mueller, a candidate in the 11th congressional district of Ohio, concerning preemption by the Federal Election Campaign Act of 1971, as amended ("the Act"), of a provision of Ohio law relating to political communications.

You state that your question arises with the Ohio Secretary of State's office. According to your request, under Ohio election law the Committee is required to include either the word "elect" or "for" in its campaign logo.² You state that either "Elect Margaret Mueller Congress" or "Margaret Mueller for Congress" would satisfy the Ohio requirement, but that the Committee wishes to use a logo that states simply "Margaret Mueller Congress." You ask whether the Act preempts application of Ohio law to the situation you describe.

¹ Although your letters refer to "Mueller for Congress," the Commission notes that according to a Statement of Organization and Statement of Candidacy filed on March 31, 1986, Margaret Mueller for Congress Committee is the principal campaign committee of Margaret R. Mueller. According to Commission records, the candidate has no other authorized committees.

² The Commission assumes from your request that you have determined, or been informed by the Ohio Secretary of State, that the Ohio statute in question is in fact applicable to your proposed use of the logo contained in your request.

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Under §3599.091(B)(1) of the Ohio Revised Code, it is unlawful for any person, during the course of any campaign for nomination or election to public office, by means of campaign materials³ or otherwise, to "[u]se the title of an office not currently held by a candidate in a manner that implies that the candidate does currently hold that office...." To be covered by this provision, the candidate must use the title "knowingly and with intent to affect the outcome" of his or her campaign. Neither the Act nor the Commission's regulations, however, contain such a requirement. See 2 U.S.C. 441d and 11 CFR 101.11.

Under 2 U.S.C. 453, the Act and Commission regulations supersede any provision of state law with respect to election to Federal office. See also 11 CFR 108.7. The House Report accompanying the 1974 Amendments to the Act states in part that "[t]he provisions of the conference substitute make it clear that the Federal law occupies the field with respect to criminal sanctions relating to limitations on campaign expenditures, the sources of campaign funds used in Federal races, the conduct of Federal campaigns, and similar offenses, but does not affect the States' rights to prohibit false registration, voting fraud, theft of ballots, and similar offenses under State law."⁴ The Report also states that Federal law is controlling "with respect to reporting and disclosure of political contributions to and expenditures by Federal candidates and political committees, but does not affect State laws as to the manner of qualifying as a candidate, or the dates and places of election."⁵

Commission regulations follow these expressions of legislative intent by explaining that the Act and regulations issued thereunder supersede and preempt State law with respect to the organization and registration of political committees supporting Federal candidates, the disclosure of receipts and expenditures by Federal candidates and political committees, and limitations on contributions and expenditures regarding Federal candidates and political committees. 11 CFR 108.7(b).

In several advisory opinions involving factual situations similar to the one you have presented, the Commission has concluded that the Act preempts provisions of state law. For example, in Advisory Opinion 1978-24, the Commission held that the Act superseded and preempted a Washington statute that required designation of party affiliation on all campaign advertising. In Advisory Opinion 1980-36, the Commission concluded that the Act preempted §3599.09 of the Ohio Revised Code, which required that a published political communication designed to promote the nomination or election or defeat of a candidate must contain the name and residence address of the chairman or secretary of the organization issuing the communication, or the person responsible for the communication. Finally, in Advisory Opinion 1981-27, the Commission concluded that the Act superseded and preempted a Houston, Texas, ordinance concerning the placement of a "warning" on all political campaign materials placed, posted, or erected in the city, insofar as that ordinance was applied to elections to Federal office. See also Advisory Opinion 1978-54.

³ The Ohio statute defines the term "campaign materials" to include "sample ballots, an advertisement on radio or television or in a newspaper or periodical, a public speech, [or a] press release..." Ohio Rev. Code Ann. §3599.091(B).

⁴ House Report of the Committee of Conference on the Federal Election Campaign Act Amendments of 1974 (Report No. 93-1438, 93d Cong., 2d Sess., 69, 1974).

⁵ *Id.* at 100-101.

On the basis of these opinions and the clear legislative history of 2 U.S.C. 453, the Commission concludes that to the extent §3599.091(B)(1) of the Ohio Revised Code applies to the Committee's use of the described logo, the Act and regulations supersede and preempt this provision of State law.

The response constitutes an advisory opinion concerning application of the Act, or regulations prescribed by the Commission, to the specific transaction or activity set forth in your request. See 2 U.S.C. 437f.

Sincerely yours,

(signed)

Joan D. Aikens
Chairman for the
Federal Election Commission

Enclosures (AOs 1981-27, 1980-36, 1978-54, and 1978-24)

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